



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes ERP, RP, OLC, FF

Introduction

A substantial amount of documentary evidence, photo evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

Whether or not the use of a portable washing machine in the rental unit is in contravention of the tenancy agreement or the Residential Tenancy Act.

Whether or not the landlord has failed to comply with their obligations to make repairs in the rental unit.

Whether or not the landlord has breached the Residential Tenancy Act by threatening to evict the tenant for issuing letters to other tenants in the rental property.

Whether or not the landlord is giving proper notice before entering the rental unit.

Background and Evidence

Washing machine

The applicant/tenant testified that:

- He has a portable washing machine that is designed to be used in apartments.
- He had made some minor alterations to the plumbing to install the washing machine, which have now been removed.
- The landlord is insisting that he remove the washing machine from the rental unit, even though it is no longer installed to the plumbing.
- Since the washing machine is not installed, and is being used as designed he does not believe he should have to get rid of the washing machine.

The applicant is therefore requesting an order that he be allowed keep and use the washing machine his rental unit.

The respondent/landlords testified that:

- The tenancy agreement, signed by the tenant and the landlord on May 2, 2007, states, in part, "heavy appliances or equipment of any kind may not be installed by the tenant without written permission from the landlord".
- A washing machine even if it is designed for use in apartment is still considered a heavy appliance and therefore should not have been installed by the tenant.
- The tenant altered the plumbing without permission, to install the washing machine and although he may have changed the plumbing back, they still want the washing machine removed.
- The use of the washing machine in the apartment could cause water fluctuations that would adversely affect the other tenants in the rental property.

The landlords are therefore requesting that the tenant be ordered to remove the washing machine.

Repairs

The tenant testified that:

- There was a leak in the plumbing between his apartment and the adjoining apartment that was not related to the washing machine and although the plumbing itself has been repaired the landlord has not completed the repairs to the wall in his bathroom.
- He has requested numerous times that the landlords repair the wall however each time the landlord states that they will not repair the wall until the washing machine is removed, claiming that it is in the way.
- He has told the landlords that access to the affected area will be assured as long as they give him proper notice that they are coming to do the repair.
- He has also informed the landlords that the faucet leaks and they have failed to repair the faucet.

The tenant is therefore requesting that an order be issued to the landlords for the repair of the bathroom wall and faucet.

The landlords testified that:

- They have informed the tenant on numerous occasions that they will do the requested repairs when he removes the washing machine from the rental unit.
- The washing machine takes up a large portion of the bathroom and as a result it would be very difficult to do drywall repairs with the washing machine still in the unit.
- Even though he's been requested on numerous occasions to remove the washing machine the tenant has not done so.

The landlords therefore request that the tenant be ordered to remove the washing machine from the rental unit before the repairs are done.

Threat of eviction/free-speech

The tenant testified that:

- The landlord has threatened to evict him because he sent letters complaining about the landlords to five of his co-tenants.
- He believes this is harassment on the part of the landlords and an attempt by the landlords to limit his freedom of speech.

The tenant therefore requests that action be taken against the landlords pursuant to sections 95(2)(b), of the Residential Tenancy Act.

The landlords testified that:

- The tenant circulated nasty letters that conflicted with fact in an attempt to harass the landlord, by inciting discontent amongst the other tenants.
- They therefore requested that the tenant refrain from any further harassment of the landlord.

Notice times

The tenant testified that:

- The landlord has not been giving the proper 24-hour notice of entry.
- The landlord has posted documents or slips them under the door and therefore those documents are not considered served for three days.
- The landlord does not take into consideration when they are considered to be in served and enters 24 hours after they were posted.

The applicant is therefore requesting an order that the landlords follow the service provisions of the act when giving notices to enter.

The landlords testified that:

- They thought they were giving the proper 24-hour notice when they posted the documents on the door and did not realize that they would not be considered served until three days later.
- Now that they understand the requirements they will fully comply.

Analysis

Washing machine

It is my decision that the tenant is breaching the tenancy agreement by having a washing machine in the rental unit. The tenancy agreement very clearly states that “heavy appliances or equipment of any kind may not be installed by the tenant without written permission from the landlord”.

The landlord has never given written permission to the tenant to have the washing machine and although the tenant argues that the tenancy agreement does not define what heavy appliance means, it is my decision that it is reasonable to consider that this washing machine meets the definition of heavy appliance.

The tenant has also argued that now that he has disconnected it from the plumbing it cannot be considered to be installed however it is my decision that this is simply splitting hairs. Even if the machine is designed to be connected to the taps it is still installed on the taps at the time that it is being used.

Residential Tenancy Branch
Ministry of Housing and Social Development

Therefore it is my decision that the tenant must remove the washing machine from his rental unit and if he fails to do so the landlords will be able to give a Notice to End Tenancy.

Repairs

It is also my decision that it is reasonable for landlords to request that the unauthorized washing machine be removed from the rental unit prior to proceeding with repairs. The landlords have informed the tenant numerous times that they are willing to do the repairs when the washing machine is removed, and yet the tenant continues to refuse their request.

Since I've already found the tenant must remove the washing machine from his rental unit I will not issue any order for this repair to be done and I accept that the landlords will do the repair once the tenant confirms that the washing machine has been removed.

Threat of eviction/free-speech

I have no jurisdiction over this matter. If the applicant believes that action should be taken against the landlords pursuant to sections 95(2)(b), of the Residential Tenancy Act, the applicant should address his concerns to the Director of the Residential Tenancy Branch.

Notice times

I accept the landlord's explanation that they misunderstood the service requirements for 24-hour written notice.



Dispute Resolution Services

Page: 7

Residential Tenancy Branch
Ministry of Housing and Social Development

I also accept their statement that they will, in future, comply with the service requirements before entering the rental unit and therefore I will not issue any order with regards to notice times.

Conclusion

Having found that the majority of the tenant's claims are without merit I will not be issuing any orders against the landlord. I further order that the applicant bear the \$50.00 cost of the filing fee to be paid for today's hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: November 05, 2009.

Dispute Resolution Officer